

AMENDED IN ASSEMBLY JUNE 28, 2001

AMENDED IN ASSEMBLY JUNE 27, 2001

AMENDED IN ASSEMBLY JUNE 18, 2001

AMENDED IN SENATE MAY 8, 2001

AMENDED IN SENATE APRIL 25, 2001

SENATE BILL**No. 982**

Introduced by Senators O’Connell, McPherson, and Sher

~~(Principal coauthor: Assembly Member Thomson)~~

(Coauthors: Assembly Members Aroner, Calderon, Cedillo, Chan, Cohn, Dutra, Goldberg, Havice, Keeley, Kehoe, *Jackson*, Longville, Lowenthal, *Maldonado*, Migden, Nakano, Reyes, Shelley, Strom-Martin, *Thomson*, Washington, Wayne, and Wiggins)

February 23, 2001

An act to add Sections 56836.156 and 56836.157 to the Education Code, relating to special education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL’S DIGEST

SB 982, as amended, O’Connell. Special education.

Existing law requires, if the Commission on State Mandates determines that an act contains costs mandated by the state, that reimbursement to local agencies and school districts for those costs be made, as specified.

Under existing law, every individual with exceptional needs, who is eligible to receive educational instruction, related services, or both, is

required to receive educational instruction, services, or both, at no cost to his or her parents or, as appropriate, to him or her.

This bill would require the Superintendent of Public Instruction to perform specified computations with respect to special education local planning areas and affected pupils and to permanently increase the amount per unit of average daily attendance for those areas. The bill would also state that, commencing with the 2001–02 fiscal year, to the 2010–11 fiscal year, \$25,000,000 shall be appropriated, on a one-time basis each fiscal year, for allocation to school districts pursuant to a prescribed calculation.

The bill would appropriate \$100,000,000 in augmentation of Item 6110-161-0001 of Section 2.00 of the Budget Act of 2001 for the purposes of the actions taken by the superintendent, as stated above. The bill would appropriate \$270,000,000 to the Superintendent of Public Instruction for allocation on a one-time basis to school districts, county offices of education, and special education local plan areas. The bill would also appropriate \$25,000,000 in augmentation of Item 6110-161-0001 of Section 2.00 of the Budget Act of 2001 for purposes of making the first one-time allocation in each fiscal year for the 2001–02 fiscal year to school districts, as provided for above. The bill would state that the allocation of certain of those funds is in full satisfaction and in lieu of any reimbursable mandate claims relating to special education programs and services, as specified.

Section 8 of Article XVI of the California Constitution (Proposition 98) sets forth a formula for computing the minimum amount of General Fund revenues that the state is required to appropriate for the support of school districts, as defined, and community college districts for each fiscal year. That formula is adjusted in certain fiscal years for changes in pupil enrollment, as specified. Certain funds appropriated by this bill would be applied toward the minimum funding requirements for school districts and community college districts imposed by Section 8 of Article XVI of the California Constitution.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes. State-mandated local program: no.



The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares that it is in the state's interest that legislation be enacted immediately to provide funding for special education and resolve a contested state mandate issue of 20-year standing. The Legislature anticipates that the Governor will request the enactment of the legislation prior to the enactment of the 2001–02 Budget Act.

SEC. 2. Section 56836.156 is added to the Education Code, to read:

56836.156. (a) The Superintendent of Public Instruction shall determine the statewide total average daily attendance used for the purposes of Section 56836.08 for the 2001–02 fiscal year. For the purposes of this calculation, the 2000–01 second principal average daily attendance for the court, community school, and special education programs served by the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area shall be used in lieu of the average daily attendance used for that agency for the purposes of Section 56836.08.

(b) The superintendent shall divide one hundred million dollars (\$100,000,000) by the amount determined pursuant to subdivision (a).

(c) For each special education local plan area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of Section 56836.08 for the 2001–02 fiscal year by the quotient determined pursuant to subdivision (b). This increase shall be effective beginning in the 2001–02 fiscal year.

(d) Notwithstanding subdivision (c), for the Los Angeles County Juvenile Court and Community School/Division of Alternative Education Special Education Local Plan Area, the superintendent shall permanently increase the amount per unit of average daily attendance determined pursuant to subdivision (b) of Section 56836.08 by the ratio of the amount determined pursuant to subdivision (b) to the statewide target per unit of average daily attendance determined pursuant to Section 56836.11 for the 2000–01 fiscal year. This increase shall be effective beginning in the 2001–02 fiscal year.

1 (e) The superintendent shall increase the statewide target per
2 unit of average daily attendance determined pursuant to Section
3 56836.11 for the 2001–02 fiscal year by the amount determined
4 pursuant to subdivision (b).

5 (f) The funds provided in subdivisions (a) to (e), inclusive,
6 shall be used for the costs of any state-mandated special education
7 programs and services established pursuant to Sections 56000 to
8 56885, inclusive, and Sections 3000 to 4671, inclusive, of Title 5
9 of the California Code of Regulations, as those sections read on or
10 before July 1, 2000. These funds shall be considered in full
11 satisfaction of, and are in lieu of, any reimbursable mandate claims
12 relating to special education programs and services, with the
13 exception of the programs and services delineated in subdivision
14 (g). By providing this funding, the state in no way concedes the
15 existence of any unfunded special education reimbursable
16 mandate. These funds shall be used exclusively for programs
17 operated under this part and, as a first priority, for the following
18 programs, which shall be deemed to be fully funded within the
19 meaning of subdivision (e) of Section 17556 of the Government
20 Code:

21 (1) Community advisory committees established pursuant to
22 Sections 56190 to 56192, inclusive, and Section 56194, as these
23 sections read on July 1, 2000.

24 (2) Governance structure established pursuant to subdivision
25 (a) of Section 56195.3, as this section read on July 1, 2000.

26 (3) Enrollment caseloads established pursuant to subdivision
27 (c) of Section 56362, and Section 56363.3, as these sections read
28 on July 1, 2000.

29 (4) Extended school year established pursuant to subdivision
30 (d) of Section 3043 of Title 5 of the California Code of
31 Regulations, as this section read on July 1, 2000.

32 (5) Resource specialist program established pursuant to
33 subdivisions (d), (e), and (f) of Section 56362, as this section read
34 on July 1, 2000.

35 (6) Maximum age limit established pursuant to paragraph (4)
36 of subdivision (c) of Section 56026, as this section read on July 1,
37 2000.

38 (7) Interim placements established pursuant to subdivision (b)
39 of Section 56325, as this section read on July 1, 2000, and Section

1 3067 of Title 5 of the California Code of Regulations, as this
2 section read on December 31, 1994.

3 (8) Written consent established pursuant to Sections 56321 and
4 56346, as these sections read on July 1, 2000.

5 (9) Preschool transportation programs for ages 3 to 5,
6 inclusive, not requiring intensive services (Not-RIS) established
7 pursuant to Section 56441.14, as this section read on July 1, 2000.

8 (10) Special education for pupils ages 3 to 5, inclusive, and 18
9 to 21, inclusive, established pursuant to Section 56026, as this
10 section read on July 1, 2000.

11 (11) With the exception of the programs delineated in
12 subdivision (g), any other state-mandated special education
13 programs and services established by Sections 56000 to 56885,
14 inclusive, and Sections 3000 to 4671, inclusive, of Title 5 of the
15 California Code of Regulations, as those sections read on or before
16 July 1, 2000, whether or not such a mandate has been found by the
17 Commission on State Mandates. Pursuant to subdivision (e) of
18 Section 17556 of the Government Code, these funds shall be
19 deemed to be additional revenue specifically intended to fund the
20 costs of any such state-mandated special education programs and
21 services.

22 (g) Notwithstanding subdivision (f), the following existing
23 mandate test claim remains subject to the normal mandate
24 procedure, including judicial review, if any: behavioral
25 interventions established pursuant to Section 56523 and Sections
26 3001 and 3052 of Title 5 of the California Code of Regulations, as
27 those sections read on July 1, 2000 (CSM-4464 filed by the San
28 Diego Unified School District, the San Joaquin County Office of
29 Education, and the Butte County Office of Education). The
30 exclusion of this claim from subdivision (f) in no way constitutes
31 a concession by the state that any unfunded special education
32 mandate exists.

33 (h) Within the meaning of subdivision (e) of Section 17556 of
34 the Government Code, the funds appropriated for purposes of this
35 section are not specifically intended to fund any state-mandated
36 special education programs and services resulting from
37 amendments enacted after July 1, 2000, to any of the following
38 statutes and regulations:

(1) The Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.), if the amendments result in circumstances where state law exceeds federal law.

(2) Federal regulations implementing the Individuals with Disabilities Education Act (34 C.F.R. 300 and 303), if the amendments result in circumstances where state law exceeds federal law.

(3) Part 30 (commencing with Section 56000).

(4) Sections 3000 to 4671, inclusive, of Title 5 of the California Code of Regulations.

(i) State funds otherwise allocated to each special education local plan area pursuant to Chapter 7.2 (commencing with Section 56836) of Part 30 and appropriated through the annual Budget Act shall supplement and not supplant these funds.

SEC. 3. Section 56836.157 is added to the Education Code, to read:

56836.157. (a) Commencing with the 2001–02 fiscal year to the 2010–11 fiscal year, inclusive, the amount of twenty-five million dollars (\$25,000,000) shall be appropriated, on a one-time basis each fiscal year, from the General Fund for allocation to school districts on a per pupil basis. The Superintendent of Public Instruction shall compute the amount per pupil by dividing twenty-five million dollars (\$25,000,000) by the total average daily attendance, excluding attendance for regional occupational centers and programs, adult education, and programs operated by the county superintendents of schools, for all pupils in kindergarten through grade 12 in all school districts as used by the Superintendent of Public Instruction for the second principal apportionment for the 1999–2000 fiscal year. Each school district’s allocation shall equal the per pupil amount times the district’s average daily attendance as reported to the Superintendent of Public Instruction for the second principal apportionment for the 1999–2000 fiscal year. The amount allocated to each school district shall be the same in all subsequent fiscal years as it is in the first fiscal year.

(1) In any fiscal year in which the provisions of paragraph (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution are operative, the annual appropriation shall not be required to be made.

(2) The Director of Finance shall notify, in writing, the fiscal committees of both houses of the Legislature, the Controller, and the Superintendent of Public Instruction no later than May 14 that the appropriation for the following fiscal year is not required, pursuant to paragraph (1). If an appropriation is not made for a specific fiscal year, or years, it shall instead be made in the fiscal year, or years, immediately succeeding the final payment pursuant to subdivision (a).

(b) (1) From the funds appropriated for purposes of this section in subdivision (b) of Section 4 of the act adding this section, the Superintendent of Public Instruction shall allocate the following:

(A) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of ten million eight hundred thousand dollars (\$10,800,000) shall be allocated by the superintendent to county offices of education on an equal per pupil amount. The superintendent shall determine the per pupil amount by dividing ten million eight hundred thousand dollars (\$10,800,000) by the total statewide county special education pupil count only, reported by county offices of education as of December 1999. The allotment for each county office of education shall be the per pupil amount times the county's special education pupil count reported as of December 1999.

(B) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of two million seven hundred thousand dollars (\$2,700,000) shall be allocated by the superintendent to SELPAs that existed for the 1999–2000 fiscal year. The superintendent shall determine the amount of each agency's allotment by dividing the two million seven hundred thousand dollars (\$2,700,000) by the total statewide special education pupil count as of December 1999. The allotment for each agency shall be the statewide per pupil amount times the SELPA's special education pupil count reported as of December 1999. The superintendent shall adjust the computations in such a manner as to ensure that the minimum allotment to each SELPA is at least ten thousand dollars (\$10,000).

(C) From the appropriation provided by subdivision (b) of Section 4 of the act adding this section, the amount of six million dollars (\$6,000,000) shall be allocated by the superintendent to the Riverside County Office of Education.

1 (2) The superintendent shall compute a per pupil amount from
2 the balance of the appropriation provided by subdivision (b) of
3 Section 4 of the act adding this section, after the appropriation has
4 been reduced by the amounts in paragraph (1), by dividing the
5 remaining portion of the appropriation by the total average daily
6 attendance, excluding attendance for regional occupational
7 centers and programs, adult education, and programs operated by
8 the county superintendents of schools, for all pupils in
9 kindergarten through grade 12 in all school districts as used by the
10 Superintendent of Public Instruction for the second principal
11 apportionment for the 1999–2000 fiscal year.

12 The superintendent shall apportion to each school district an
13 amount equal to the per pupil amount times the district's reported
14 average daily attendance for the second principal apportionment
15 for the 1999–2000 fiscal year, excluding attendance for regional
16 occupational centers and programs, adult education, and programs
17 operated by the county superintendent of schools.

18 (c) The amounts appropriated by subdivisions (a) and (b) of
19 Section 4 of the act adding this section are in full satisfaction and
20 in lieu of mandate claims resulting from the Commission on State
21 Mandates cases identified as (1) Riverside County Superintendent
22 of Schools, et al., CSM-3986 on remand from the Superior Court
23 of Sacramento County, No. 352795, and (2) Long Beach Unified
24 School District, CSM-3986A (consolidated with the Santa
25 Barbara County Superintendent of Schools, SB 90-3453).

26 SEC. 4. (a) The amount of one hundred million dollars
27 (\$100,000,000) is hereby appropriated from the General Fund in
28 augmentation of Item 6110-161-0001 of Section 2.00 of the
29 Budget Act of 2001 to the Superintendent of Public Instruction for
30 the purposes of Section 56836.156 of the Education Code.

31 (b) (1) The amount of two hundred seventy million dollars
32 (\$270,000,000) is hereby appropriated from the General Fund to
33 the Superintendent of Public Instruction for allocation on a
34 one-time basis to school districts, county offices of education, and
35 special education local plan areas (SELPAs), as specified in
36 subdivision (b) of Section 56836.157 of the Education Code.

37 (2) For the purposes of making the computation required by
38 Section 8 of Article XVI of the California Constitution, this
39 appropriation shall be deemed to be "General Fund revenues
40 appropriated for school districts," as defined in subdivision (a) of

1 Section 41202 of the Education Code, for the 1999–2000 fiscal
2 year, and included with the “total allocations to school districts
3 and community college districts from General Fund proceeds of
4 taxes appropriated pursuant to Article XIII B,” as defined in
5 subdivision (e) of Section 41202 of the Education Code, for the
6 1999–2000 fiscal year.

7 (c) The amount of twenty-five million dollars (\$25,000,000) is
8 hereby appropriated from the General Fund in augmentation of
9 Item 6110-161-0001 of Section 2.00 of the Budget Act of 2001 for
10 purposes of making the first one-time allocation in each fiscal year
11 for the 2001–02 fiscal year, as required by subdivision (a) of
12 Section 56836.157 of the Education Code.

13 SEC. 5. This act is an urgency statute necessary for the
14 immediate preservation of the public peace, health, or safety
15 within the meaning of Article IV of the Constitution and shall go
16 into immediate effect. The facts constituting the necessity are:

17 In order to alleviate the fiscal hardship to local educational
18 agencies caused by persistent shortfalls in federal funding for
19 special education; to increase state funding for the special
20 education program, thereby reducing encroachment; to facilitate
21 the settlement of current litigation regarding those programs and
22 the funding thereof; to obviate new litigation; and to resolve
23 related school finance issues, it is necessary for this act to take
24 effect immediately.

25
26 CORRECTIONS

27 **Heading — Line 1.**
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29